



- CITY OF BIGGS -
PLANNING DEPARTMENT STAFF REPORT

465 C Street /
P.O. Box 1134
Biggs, CA 95917

PHONE: (530) 868-5493
FAX: (530) 868-5239

DATE: November 15, 2011
TO: Honorable Mayor and Members of the City Council
FROM: Scott Friend, AICP City Planner
SUBJECT: Code Enforcement - 2011 Marijuana Abatement Effort (outdoor cultivation)

Report Summary:

Acting at the direction of the City Administrator, the Planning and Code Enforcement Department have prepared this staff report to provide the City Council with an overview and summary of the effort of the Department to address the outdoor cultivation of marijuana during the 2011 growing season. The purpose of this report is to provide the Council with details concerning the work effort of staff in addressing this issue, to provide a forum for the discussion of the City's enforcement efforts, and to allow for discussion on issues relating to outdoor marijuana cultivation and the City's adopted nuisance code.

Background:

Chapter 6 – Public Health and Safety; Section 6.25, Health and Safety and Nuisance Abatement of the Biggs Municipal Code (BMC) establishes the primary authority for the City's code enforcement efforts concerning the outdoor cultivation of marijuana. Specifically, section 6.25.020.2.e and Sections 6.25.055-.085 provide the details of the City's marijuana code requirements and detail the citation, enforcement and nuisance fine program (see *Attachment A*). In addition to Section 6.25, Section 14.10 – Definitions of Chapter 14, Zoning of the BMC provides definitions for terms used in the enforcement of the provisions of Section 6.25 (see *Attachment B* for select definitions of applicability).

The City's marijuana-related nuisance code provisions are based upon three concepts and primary citations:

1. The cultivation of marijuana is permitted in the City of Biggs subject to City requirements that the cultivation activity occur within a fully enclosed and secured structure (*BMC Section 6.25.020(9)*);
2. The storage of marijuana is permitted in the City of Biggs subject to City requirements that the storage of such occurs within a fully enclosed and secured structure from which no detectable odor can be determined from a public street, right-of-way or neighboring property (*BMC Section 6.25.055(1)*); and,
3. The cultivation or storage of marijuana is not permitted in a location which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property (*BMC Section 6.25.020.2(e)*).

The City's marijuana-related code enforcement efforts are based upon five primary concepts:

1. Code enforcement efforts addressing the cultivation or storage of marijuana is pursued as a nuisance violation only and not as a criminal violation.
2. Planning and code enforcement staff only pursues violations of the Code as matters of a public nuisance and active cases are closed when the nuisance condition is satisfactorily abated.
3. City staff does not pro-actively seek out and attempt to identify grow locations. However, staff actively responds to citizen complaints, observations made during the routine course of business and information provided by law enforcement.
4. Code enforcement follow-up and action is initiated immediately following receipt of credible and actionable information by information sources and complaints are taken anonymously. And,
5. City staff attempt to address compliance issues associated with marijuana cultivation and storage in a manner which acknowledges the property owner/tenants rights under State law to cultivate or store balanced against the City's police power authority to regulate nuisance matters.

2011 Enforcement Activity Summary:

In 2011, the City's Planning and Code Enforcement Department actively pursued and successfully abated through the administrative hearing process four violations of the City's Municipal Code dealing with the cultivation or storage of marijuana. The four cases were as follows:

- 393 B Street (outdoor cultivation);
- 454 Trent Street (outdoor cultivation and storage);
- 490 G Street (outdoor cultivation); and,
- 582 Aleut Street (cultivation visible from a public street or right-of-way).

In addition to the four cases noted above, City staff followed-up on and/or pursued numerous additional leads or pieces of information that did not result in the initiation of an active abatement case. In three of the four cases noted above, the pursuit of the cases resulted in a noticed administrative hearing pursuant to BMC Section 6.25.050(8) and the imposition of penalties and fines. The fourth case was abated voluntarily by the homeowner/tenant within the statutorily allowed 48-hour time period and no hearing was held due to the abatement of the nuisance condition.

In total, fines related to the pursuit of these three cases totaled \$700.00 and to date, \$250.00 has been collected. The fines associated with these cases were intended to cover staff costs incurred by the City as a result of the pursuit of the violation as well as the assessment of a monetary penalty pursuant to the provisions of BMC section 6.2.5.085. On average, staff expended approximately 6-10 hours of time in the pursuit of each case resulting in an administrative hearing.

In all three of the cases that resulted in the noticing and holding of an administrative hearing, staff worked with the City Administrator, City Attorney and Police Department to pursue to case. Pursuant to the procedure set-forth in the Biggs Municipal Code, the following primary steps occur in the citation process.

- Inspection of property by police department or city staff and observation or detection of an actionable nuisance condition;
- Issuance of 48-hour Declaration of Public Nuisance and Notice of Intent to Abate letter (delivered via personal service);

- Issuance of Notice of Public Hearing to Determine Existence of Public Nuisance and To Abate In Whole or Part letter (delivered via personal service;
- Administrative hearing held to determine existence of a violation and to levy fines and/or abatement instructions;
- Follow-up inspection to determine compliance with administrative order.

Observations / Considerations / Discussion Topics:

During the course of the department's 2011 enforcement activities various observations, considerations and discussion topics were identified. Those include the following:

1. Definitions and intent of adopted Code provisions, specifically the definition of the terms 'secured' and 'enclosed'.
2. The differentiation between the use of marijuana and the cultivation or storage of marijuana and City's nuisance code related to odor.
3. Interpretation of the concept of an 'odor'.
4. Use of media, City website, newsletter, utility bills, etc. to provide information about City codes and regulations concerning the cultivation and/or storage of marijuana in the City.

As it is staff's goal to make sure that the City's codes are being interpreted and enforced consistent with the intent of the City Council's direction, staff is seeking discussion and direction, as necessary, from the Council on the current approach and direction of the City's enforcement of marijuana-related nuisance violations.

Fiscal Impact:

Staff time for presentation and discussion. No direct fiscal impacts anticipated with this action at this time.

Request:

Staff is requesting that the City Council acknowledge the receipt of this report and provide any direction or comments to staff relative to the enforcement actions taken during the active 2011 outdoor marijuana cultivation season and provide input to staff relative to the refinement of the enforcement program moving forward.

Attachments:

- Attachment A - BMC Section 6.25: HEALTH AND SAFETY AND NEIGHBORHOOD NUISANCE ABATEMENT
- Attachment B - Topic related select definitions – Biggs Municipal Code

Chapter 6.25

HEALTH AND SAFETY AND NEIGHBORHOOD NUISANCE ABATEMENT

Sections:

6.25.010	Purposes.
6.25.020	Unlawful Property Nuisance – Private property.
6.25.030	Unlawful Property Nuisance – Public property.
6.25.040	Declaration of Public Nuisance.
6.25.050	Existence of Public Nuisance, Hearing and Voluntary Abatement.
6.25.055	Nuisance Abatement –Visible/Unsecured Odiferous Marijuana Cultivation.
6.25.060	Public Agency Inspections.
6.25.065	Administrative Public Nuisance Abatement by the City.
6.25.070	Summary Abatement.
6.25.080	Nuisance Abatement Lien.
6.25.085	Nuisance Abatement Fines.

6.25.010 Purposes.

The purposes of this Chapter are: (1) to protect the City's residents from threats to health and safety that result from specified nuisance conditions and (2) to promote an attractive and desirable community by identifying and providing a means to abate specified nuisance conditions that if permitted to continue, will cause substantial diminution of the enjoyment, use and value of affected properties. [Ord. 323 § 1, 2001]

6.25.020 Unlawful Property Nuisance – Private Property.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of private property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions which are visible from a public street or right-of-way and are found to exist thereon, except as may be allowed by this code:

- (1) Unlawful Outdoor Storage.
 - (a) The accumulation of abandoned, discarded, or dilapidated objects which constitutes a threat to the general public's health, safety or welfare, including but not limited to: junked, abandoned, wrecked, dismantled or inoperative vehicles; vehicle parts and equipment; machine parts; scrap material; appliances; furniture, household equipment and furnishings; shopping carts; containers, packing materials; scrap metal; scrap wood; plant cuttings; rubbish and/or debris.
 - (b) Attractive nuisances, dangerous to those members of the public unable to discover the nuisance condition, or recognize its potential danger, including, but

not limited to: abandoned, broken, neglected or unsupervised vehicles; machinery; equipment; refrigerators and freezers; pools, ponds and excavations; marijuana plants, the cultivation of which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property

- (c) The placement of items of business inventory, refuse containers, equipment, vehicles, or similar obstructions on the street or sidewalk without prior city approval.
 - (d) The storage of firewood or other flammable materials used for heating purposes in excess of standards relating to the safe storage of combustible materials as determined by the city of Biggs Fire Department and the Uniform Fire Code.
 - (e) Items stacked in a dangerous fashion both adjacent to and physically separated from publicly accessible areas.
 - (f) The accumulation of dirt, sand, gravel, concrete, litter, debris or other similar material on the property which is visible from the street.
 - (g) Materials stored or stacked on commercial or industrial property within the front or street side yard in such zoning districts, except where such storage is allowed by the city under a conditional use permit.
 - (h) Unregistered vehicles or other articles of personal property which are left in a state of partial construction, dilapidation or disrepair for more than four months.
- (2) Landscaping/Vegetation.
- (a) Dead, decayed, diseased or hazardous trees, weeds or other vegetation constituting a danger to public safety and welfare and/or constituting unsightly appearance detrimental to neighboring property or property values.
 - (b) Overgrown vegetation likely to harbor rats, vermin and other nuisances resulting in potential health hazards.
 - (c) Vegetation growing into the public right of-way, obstructing the necessary view of drivers on public streets, rights-of-way or private driveways.
 - (d) Failure to comply with the requirements set forth in any city zoning approval or permit applicable to the premises.

- (e) Marijuana plants, the cultivation of which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property
 - (f) Planting strips are to be landscaped with materials acceptable to the City Park Superintendent; materials include decorative bark or rocks, green grass, trees, drought resistant plants and shrubs. The mow strip must be maintained. Dead vegetation, dirt and base rock are not considered acceptable maintenance.
 - (g) Sidewalks and mow strips are to be maintained to provide for safe passage. Placement and type of trees in mow strips are to be specified by City Parks Superintendent. Property owner is to maintain and replace any trees and landscaping in mow strips.
- (3) Trash, Litter, Trimmings, Oil and Debris.
 - (a) Pooled oil, water, or other liquid accumulation, flowing onto the street, or excessive accumulations of grease or oil on paved surfaces.
 - (b) The accumulation of litter, debris, trimmings or trash stored, accumulated, or placed on private property, in a yard, or portion thereof, including sidewalks, gutters, driveways, parking lots or the public right-of-way, which is generated on, or as a consequence of the use or maintenance of the property.
- (4) Trash Containers.
 - (a) Trash containers without secure, firmly fitting covers or evidencing an overflow of trash and or other debris.
 - (b) Except on normal trash pick-up days, trash, garbage or refuse cans, bins, boxes or other such containers shall be stored away from the public right-of-way and out of view, screened, or against a structure and no farther toward the street than the vertical plane of the front of the structure.
- (5) Buildings and Structures.
 - (a) Buildings dilapidated, abandoned, boarded up, partially destroyed, having broken windows or broken windows secured with wood or other materials for more than 30 days.
 - (b) Buildings left in a state of partial construction for six months, absent compelling extenuating circumstances.

- (c) Buildings subject to demolition pursuant to applicable permit or other authority, for which demolition has not been diligently pursued.
 - (d) Unsecured buildings constituting hazardous conditions or inviting or permitting trespassers and malicious mischief.
 - (e) Unsecured or structurally damaged/unsound awnings or overhangs, porches or building appurtenances.
 - (f) Occupied buildings lacking active city-provided electrical utility service. Exempt from this definition are buildings with a city-approved electricity system not requiring city-provided service. Exempt from this definition is the use of temporary electrical generation in the case of emergency or power loss, but only to the extent of the emergency and/or power loss.
 - (g) Occupied buildings lacking active city-provided water service.
 - (h) Occupied buildings lacking active city-provided sanitary sewer service.
- (6) Fences and Gates.

Fences or other structures on private property abutting, fronting upon, or visible from any public street, which are unsafely leaning, fallen, decayed, or in an otherwise dilapidated, unsafe or unsightly condition.

- (7) Parking Limitations. Vehicles, whether motorized or non-motorized, shall not be:
- (a) Parked on or within any required setback or on any surface which has not previously been approved for parking purposes pursuant to applicable zoning code provisions. Therefore, parking on residential property is limited to parking on driveways and parking pads. Parking on lawns and on dirt is prohibited.
 - (b) Parked on any front lawn or landscaped area, or upon any other area with a ground surface that is not either paved or graveled; provided, however, that the total surfaced area (gravel or pavement) within the front and street side yards of an individual lot shall not exceed 700 square feet.
 - (c) Parked on the street perpendicular or diagonally to any residence unless the vehicle is parked on a legal circular driveway.
 - (d) Parked on driveways or parking pads where a portion of the parked vehicle also extends into the street.

(8) Right-of-Way.

Placing, permitting or allowing an accumulation of junk, rubbish, debris, or dead, decayed or overgrown vegetation in that area between the property line and the edge of street improvements of a given parcel. This section is intended to supplement and not stand in conflict with the provisions of Streets and Highways Code, entitled "Maintenance of Sidewalks."

(9) Cultivation of Marijuana.

The cultivation and/or storage of marijuana within the City of Biggs is hereby declared to be unlawful and a public nuisance; provided, however, that a qualified patient or primary caregiver may cultivate and/or store marijuana but only if such storage and/or cultivation is confined and limited to and within a fully enclosed and secured structure.

(10) Residential Vehicle Repair.

(a) The performance of major repairs or dismantling of any motorized or non-motorized vehicle, boat, or part thereof, in a location visible from the street.

(b) This section shall not be construed as prohibiting the registered owner of a motorized or non-motorized vehicle or boat, or part thereof, from performing minor repair of the vehicle in the driveway or other paved surface of a residence. However, the vehicle or boat must be registered to someone living in the residence and the duration of the repair shall not exceed 14 days. Proof of registration of any vehicle or boat on which minor repair is occurring shall be provided to any city of Biggs Police officer or code enforcement officer upon request.

(11) Graffiti.

Graffiti or other words, lettering or drawings, other than allowed advertisement, which remain on the exterior of any building or fence for more than 48 hours.

(12) Miscellaneous.

Any other condition or use of property which gives rise to a reasonable determination by the code enforcement officer that the condition or use represents a threat to the health and welfare of the public by virtue of its unsafe, dangerous or hazardous nature and/or if permitted to continue will cause the substantial diminution of the enjoyment, use of property values of such properties.

6.25.030 Unlawful Property Nuisance –Public Property.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any private property in the city to use, maintain or allow to be maintained for any purposes that would create any of the following conditions on adjacent or contiguous public property, except as may be allowed by this code:

- (1) Outdoor Storage, Operations or Encroachment.
 - (a) The tracking of mud, dirt, sand, gravel, and concrete onto the street or public right-of-way.
 - (b) The spilling of debris, including trash, paper, wood, plant cuttings and other vegetation, onto the street or other public right-of-way.
 - (c) The use of public property for storage of vehicles and/or other materials associated with business activity on the street, in the public right-of-way, or on other public property, except as may be allowed by this code.

- (2) Miscellaneous.

Any other condition or use of property which gives rise to a reasonable determination by the code enforcement officer that the effect of such use or condition on adjacent public property represents a threat to the health and welfare of the public by virtue of its unsafe, dangerous or hazardous nature and/or if permitted to continue will cause the substantial diminution of the enjoyment, use of property values of such properties. [Ord. 323 § 1, 2001]

6.25.040 Declaration of Public Nuisance.

Any private property, or use of private and/or public property, found to be maintained in violation of the foregoing sections is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner provided by law. [Ord. 323 § 1, 2001]

6.25.050 Existence of Public Nuisance, Hearing, and Voluntary Abatement.

- (1) Enforcement of this Chapter. Except as otherwise provided in this chapter, the provisions of this chapter shall be administered and enforced by code enforcement officers.
- (2) Declaration of Nuisance. Whenever a code enforcement officer or designated City representative finds that a nuisance, as defined in this Chapter, exists on any premises located within the City, the officer or representative shall issue a

Declaration of Nuisance to the property owner/occupier of the nuisance and directing said person(s) to abate the nuisance. The property owner shall be identified by the most recent tax assessor's roll.

- (3) Contents of Declaration. The Declaration described in 6.25.050(2) shall contain the following information:
 - (a) The name, address, parcel number, and phone number (if applicable) of the property owner;
 - (b) The City code violation citation section(s);
 - (c) A statement that the property owner/occupier shall have ten (10) days from the date of the Declaration to abate the declared nuisance by rehabilitation, repair, removal or demolition. If applicable, the Declaration may include a recommended abatement procedure.
- (4) Voluntary Abatement. The owner/occupier of property found to be a nuisance under the provisions of this Chapter, may abate the nuisance at any time within the designated abatement period by rehabilitation, repair, removal, or demolition. A City official shall be advised of the abatement and shall inspect the premises to insure that the nuisance has in fact been abated.
- (5) Failure to Voluntarily Abate a Declared Nuisance. If an owner/occupier of property declared to be a public nuisance fails to voluntarily abate the nuisance within the designated abatement period, the City shall cause to be issued a notice entitled, "NOTICE OF PUBLIC HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART."
- (6) Contents of Notice. The Notice described in 6.25.050(5) shall substantially follow the form included below:

NOTICE OF PUBLIC HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART

Notice is hereby given that on the ____ day of _____, 20____, the City of Biggs will hold a public hearing at the Biggs City Hall, located at _____, to determine whether the premises and/or a condition(s) thereon at Biggs, California, known and designated as _____ constitutes a public nuisance. If the premises, in whole or part, is found to constitute a public nuisance as defined by Chapter 6.25 of the Biggs Municipal Code, and if the same are not promptly abated by the owner, the nuisance(s) may be abated by municipal authorities, or the municipal authorities may take such other action as provided by law. The cost of rehabilitation, repair, removal or demolition, if done by municipal authorities at their discretion, will be assessed upon the premises and

the cost will constitute a lien upon the land until paid. The alleged violation(s) consist(s) of the following:

The methods of abatement available are:

All persons having any objection to, or interest in, these matters are hereby notified to attend a hearing before the City of Biggs to be held on the ____ day of _____, 20__ at the hour of _____, when their testimony and evidence will be heard and given due consideration.

Dated:

- (7) Service of Notice. The Notice described in 6.25.050(6) shall be served on the owner of the property containing the alleged public nuisance at least ten (10) days prior to the date set for the public hearing. Service shall be made by personal service upon the owner or by certified mail. If there is no known address for the owner, the notice shall be sent in care of the property address. "Owner" as used herein means any person(s) shown as the property owner on the latest equalized property tax assessment rolls, and any person having, or claiming to have, any recorded legal or equitable interest in, or to, the fee relating to the premises. In addition, notice of the hearing shall be posted upon the subject property at least five (5) calendar days before the hearing. The failure of any person to receive notice shall not affect the validity of the proceedings.
- (8) Hearing by Mayor or Council. The hearing shall be before the Mayor. However, in the discretion of the Mayor, the hearing may be convened before the City Council. At the time and place stated in the notice of hearing, the Mayor/Council shall hear and consider all relevant evidence, objections, or protests, and shall receive testimony from owners, witnesses, city personnel and interested persons relative to the alleged public nuisance and to the proposed abatement methods. The hearing may be continued from time to time. The hearing shall be public; however, if the owner/occupier believes that the hearing should not be public, the owner/occupier shall notify the Mayor of the reason(s) therefore at least three (3) days prior to the hearing. The request shall be considered.
- (9) Decision of Mayor/Council. Following the public hearing, the Mayor/Council shall consider all evidence and determine whether the premises, or any part of the premises, constitute a public nuisance as alleged. If the Mayor/Council finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, the Mayor/Council shall make written findings, and the Mayor shall sign an order, ordering the owner or other person(s) having charge or control of the premises to abate the nuisance by rehabilitation, repair, removal or demolition in the manner and by the means specifically set forth in the council order. The order shall also contain authorization for the City to abate the nuisance pursuant to this Chapter, if in the Mayor's/Council's discretion, it is determined that abatement by the City is warranted. The order shall set forth the times within

which the work shall be commenced and completed and shall be mailed to the owner by certified mail and shall also be posted upon the premises.

- (10) Abatement by City. Upon expiration of the time for abatement provided for in the council order, the City shall inspect the premises for compliance with the order, subject to the requirements of Section 6.25.060, below. If, upon inspection or observation by the City, the nuisance has not been completely abated, and, subject to authorization by City Council, code enforcement officials or other designated City representatives shall cause the public nuisance to be abated through a civil, administrative, or other permissible procedure.
- (11) Right of Contractor for Removal. When the City has contracted with or granted a franchise to any person to carry out the purpose of this chapter, such person(s) shall be authorized to enter private or public property to remedy the violation thereby allowing the property to comply with this code.
- (12) Finding of No Public Nuisance. If the Mayor/City Council determines that the property owner is not responsible for the public nuisance, the City shall not assess removal and/or administration costs against the property owner.
- (13) Alternative Means of Enforcement. This Chapter is not the exclusive regulation of code violations. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the state, or any other legal entity or agency having jurisdiction. Nothing in this chapter shall be deemed to prevent the city from authorizing the city attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this Chapter.

6.25.055 Nuisance Abatement – Visible/Unsecured Odiferous Marijuana Cultivation.

- (1) Marijuana Cultivation/Storage Nuisance Circumstances.

Notwithstanding any provision in this Chapter, the abatement measures set forth in subsection (2) of this section shall be utilized in the following nuisance circumstances: marijuana plants, or the cultivation of marijuana plants, visible from the street or neighboring property; the odor of marijuana detected from the street or neighboring property; or the presence, cultivation and/or storage of marijuana, except within a fully enclosed and secured structure.

- (2) Abatement Procedure.
 - (a) The city, through a code enforcement officer or other designees, shall issue a Declaration of Public Nuisance requiring abatement within 48 hours after the posting of that Declaration in a conspicuous place at the

location of the nuisance. The Declaration shall contain the following information:

- (i) The location of the premises.
 - (ii) A description of the specific condition(s) which represent a code violation, and the evidence relied upon to determine the existence of a code violation, except that the City may withhold the identity of a witness if that person requests and if such action is reasonable under the circumstances.
 - (iii) The date and time when abatement must be completed to avoid any further action from the City.
 - (iv) A statement that, to avoid the imposition of a civil penalty under subsection (c) below, the offending condition(s) must be abated by the deadline set forth in the Declaration.
 - (v) A statement that, if the nuisance is not abated by the deadline set forth in the Declaration, the City will issue a Notice entitled, "NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART," at which time the City will present evidence of the listed code violations and request the Mayor or, at the Mayor's discretion, the City Council, order the public nuisance be abated and impose a civil penalty of \$1,000 per day for each day that the nuisance remains unabated.
 - (vi) A statement that, in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the City elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding.
- (b) Failure to voluntarily abate nuisance. If after the expiration of the notice period the nuisance has not been abated, the City shall issue a Notice, entitled, "NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE." This Notice shall be in the substantially the same form as the Notice described in Section 6.25.050(6), above. The hearing shall be before the Mayor or, at the Mayor's discretion, the City Council, and shall be held not less than five (5) days after service of the Notice on the owner/occupier of the property. The hearing shall be public; however,

if the owner/occupier believes that the hearing should not be public, the owner/occupier shall notify the Mayor of the reason(s) therefore at least three (3) days prior to the hearing. The request shall be considered.

- (c) Service of Notice. The Notice shall be served either personally, or by certified mail, the owner of the property and, if applicable, the occupier of the property. The Notice shall also be posted on the subject property.
- (d) Hearing on Notice. At the hearing, the City shall present evidence of unlawful cultivation of marijuana to the Mayor/City Council. The owner/occupier, if present, shall also be entitled to present evidence. Upon conclusion of the hearing, the Mayor/City Council shall prepare a written Order, which shall include findings of fact and an Order. If the Mayor/City Council finds a public nuisance exists, the Officer shall direct the owner/occupier to abate the public nuisance by a date certain. The order shall also contain authorization for the City to abate the nuisance pursuant to this Chapter, if in the Mayor's/Council's discretion, it finds that abatement by the City is warranted. The order shall set forth the times within which the work shall be commenced and completed and shall be mailed to the owner/occupier by certified mail.
- (e) Abatement by City. If upon finding a violation of this Section exists, the owner/occupier fails to abate the nuisance as ordered by the Mayor/City Council, the City shall take steps to obtain and execute an Inspection/Administrative Abatement Warrant pursuant to this Chapter.
- (f) Finding of No Public Nuisance. If the Mayor/City Council determines that the property owner is not responsible for the public nuisance, the City shall not assess removal and/or administration costs against the property owner.

(3) Civil Penalties and Attorneys Fees.

- (a) Civil Penalty. Fines in the amount of up to \$1,000 per day shall be imposed upon the property owner/occupier as deemed in the above-described order for each day the property remains in violation of this section upon expiration of the time for abatement set forth in a final order by under section 6.25.055(2)(d) above. For good cause, the Mayor/Council may waive all or part of the penalty.[Ord. 385, 2010]
- (b) Attorneys Fees. In any administrative or court proceeding to enforce the abatement order, the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the City elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the

amount of reasonable attorney fees incurred by the City in the action or proceeding.

6.25.060 Public Agency Inspections.

- (1) Inspection of Premises. Code enforcement officers shall request consent of the owner/occupier of private property located in the City believed to be in violation of this Chapter to enter and inspect for such violation(s). If consent is not freely given, code enforcement officers shall first obtain an inspection warrant pursuant to Code of Civil Procedure Sections 1822.50, et seq. prior to entry onto private property.
 - (a) Exception for Violations in Plain View. Nothing in this Chapter shall preclude code enforcement officers from performing warrantless inspections of areas in plain view of such officers.
 - (b) Exception for Pervasively Regulated Activities. Nothing in this Chapter shall preclude code enforcement officers from performing routine warrantless inspections of pervasively regulated activities.
 - (c) Exception for Open Fields. Nothing in this Chapter shall preclude code enforcement officers from performing warrantless inspections of open fields.
 - (d) Exception for Exigent Circumstances. Nothing in this Chapter shall preclude code enforcement officers from performing warrantless inspections under exigent circumstances.
- (2) Form of Inspection Warrant. The Inspection Warrant shall contain, at a minimum, the following information:

Form of Administrative Abatement Warrant. The City shall cause to be prepared an Administrative Abatement Warrant and Affidavit. The Warrant shall contain, at a minimum, the following information:

- (a) Description of Premises. The Warrant shall include a description of the property onto which the City seeks entry, including, if possible, the assessor's parcel number of the property, as well as the specific area(s) of entry on the subject property (i.e., yard, dwelling house, outside structures, etc.).
- (b) Purpose of Entry. The Warrant shall contain the City's purpose for entry onto the property (i.e., to inspect for Code violations, etc.).
- (c) Conditions of Entry. The Warrant shall contain the conditions of the City's entry onto the property, including, but not limited to:

- (i) Applicable Hours of Execution. The desired hours of execution of the Warrant.
 - (ii) Entry Without Owner Present. Whether the City shall be authorized to enter onto the property without the owner/occupier present.
 - (iii) 24 Hour Notice. Whether the City is required to provide 24 hour notice to the owner/occupier of the property.
 - (iv) Forcible Entry. Whether the City may execute the Warrant by means of force.
- (d) Duration of Warrant. The Warrant shall contain the duration of the Warrant, including any extensions requested/given.
- (e) Interference Punishable by Misdemeanor. The Warrant shall contain the following statement: "Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to Title 13 of Part 3 of the Code of Civil Procedure is guilty of a misdemeanor."
- (3) Form of Affidavit. The City shall cause to be prepared an Affidavit to support issuance of an Inspection Warrant containing a showing of cause for the entry and including any written exhibits to be presented to the Warrant Judge.
- (4) Combined Inspection/Administrative Abatement Warrant. The City may use a combined Inspection/Administrative Abatement Warrant form.
- (5) Procedure for Obtaining Inspection Warrant. The City shall submit the Inspection Warrant and supporting Affidavit to the Warrant Judge then on duty for issuance. Alternatively, or upon request of the Warrant Judge, the City may notice a hearing for presentation of evidence in support of issuance of the Warrant. If a hearing is desired, the City must provide notice to the owner/occupier of the subject property. The failure of the owner/occupier to appear at a noticed hearing shall not preclude issuance of an Inspection Warrant under this Chapter.
- (6) Execution of Warrant. The City shall execute the Inspection Warrant pursuant to the terms contained therein and applicable law. Upon execution of the Warrant, the City shall cause to be filed with the Warrant Judge a Return, which shall contain a declaration, under penalty of perjury, signed by the person who executed the Warrant, which includes the date and time and location of execution, whether the owner/occupier was present, and an inventory of any property seized, as well as a proof of service of the Return on the owner/occupier.

6.25.065 Administrative Public Nuisance Abatement by City

- (1) Administrative Abatement. If a public nuisance has been declared under Sections 6.25.050 or 6.25.055, and where the owner/occupier has failed to abate the nuisance and the City has been authorized to so abate, the City may follow the procedures set forth herein to abate the nuisance by the administrative process through the City's police power.
- (2) Administrative Abatement Warrant. Subject to the exceptions listed herein, prior to entering onto private property within the City of Biggs, the City shall obtain an Administrative Abatement Warrant pursuant to this section.
 - (a) Exception for Consent. Where the owner/occupier consents to the City's entrance onto the subject property, the City need not first obtain an Administrative Abatement Warrant.
 - (b) Exception for Violations in Plain View. Where the City is lawfully on the subject property, the City need not first obtain an Administrative Abatement Warrant to abate a public nuisance in plain view of the City official(s).
 - (c) Exception for Open Fields. The City need not first obtain an Administrative Abatement Warrant to abate a public nuisance which exists in an open field within the City's geographic boundaries.
 - (d) Exception for Exigent Circumstances. The City need not first obtain an Administrative Abatement Warrant to abate a public nuisance under exigent circumstances.
- (3) Form of Administrative Abatement Warrant. The City shall cause to be prepared an Administrative Abatement Warrant and Affidavit. The Warrant shall contain, at a minimum, the following information:
 - (a) Description of Premises. The Warrant shall include a description of the property onto which the City seeks entry, including, if possible, the assessor's parcel number of the property, as well as the specific area(s) of entry on the subject property (i.e., yard, dwelling house, outside structures, etc.).
 - (b) Purpose of Entry. The Warrant shall contain the City's purpose for entry onto the property (i.e., to abate the public nuisance of _____).
 - (c) Conditions of Entry. The Warrant shall contain the conditions of the City's entry onto the property, including, but not limited to:

- (i) Applicable Hours of Execution. The desired hours of execution of the Warrant.
 - (ii) Entry Without Owner Present. Whether the City shall be authorized to enter onto the property without the owner/occupier present.
 - (iii) 24 Hour Notice. Whether the City is required to provide 24 hour notice to the owner/occupier of the property.
 - (iv) Forcible Entry. Whether the City may execute the Warrant by means of force.
- (d) Duration of Warrant. The Warrant shall contain the duration of the Warrant, including any extensions requested/given.
- (e) Disposition of Property. The Warrant shall contain directions for the disposition of any property obtained.
- (f) Interference Punishable by Misdemeanor. The Warrant shall contain the following statement: "Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to Title 13 of Part 3 of the Code of Civil Procedure is guilty of a misdemeanor."
- (4) Form of Affidavit. The City shall cause to be prepared an Affidavit to support issuance of an Administrative Abatement Warrant containing a showing of good cause for the entry and including any written exhibits to be presented to the Warrant Judge.
- (5) Procedure for Obtaining Administrative Abatement Warrant. The City shall submit the Administrative Abatement Warrant and supporting Affidavit to the Warrant Judge then on duty for issuance. Alternatively, or upon request of the Warrant Judge, the City may notice a hearing for presentation of evidence in support of issuance of the Warrant. If a hearing is desired, the City must provide notice to the owner/occupier of the subject property. The failure of the owner/occupier to appear at a noticed hearing shall not preclude issuance of an Administrative Abatement Warrant under this Chapter.
- (6) Execution of Warrant. The City shall execute the Administrative Abatement Warrant pursuant to the terms contained therein and applicable law. Upon execution of the Warrant, the City shall cause to be filed with the Warrant Judge a Return, which shall contain a declaration, under penalty of perjury, signed by the person who executed the Warrant, which includes the date and time and location of execution, whether the owner/occupier was present, and an inventory of any property seized, as well as a proof of service of the Return on the owner/occupier.

- (7) **Alternative Means of Enforcement.** This section is not the exclusive regulation of code violations. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the state, or any other legal entity or agency having jurisdiction. Nothing in this section shall be deemed to prevent the city from authorizing the city attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter.

6.25.070 Summary Abatement.

Nothing in this Chapter shall limit the City's authority to summarily abate a public nuisance which reasonably appears to pose an immediate threat to the health, safety and welfare of its citizens.

6.25.080 Nuisance Abatement Lien. [Gov. Code §38773.1]

- (1) **Costs of Abatement Borne by Property Owner.** In any action to determine the existence of and/or abate a public nuisance, the owner of the property declared to be a public nuisance shall be responsible for the City's costs incurred herein. Such costs shall constitute a lien on the subject property.
- (2) **Notice of Lien.** The City shall provide notice prior to the recordation of the lien to the owner of record of the parcel of land or which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.
- (3) **Service of Notice.** The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062 of the Government Code.
- (4) **Contents of Lien.** A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.
- (5) **Recordation of Lien.** A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

- (6) Discharge of Lien. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection 6.25.080(4) shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.
- (7) Foreclosure of Lien. A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.
- (8) Recovery of Costs of Recording. A City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

6.25.085 Nuisance Abatement Fines

- (1) Issuance of the Declaration of Nuisance (6.25.050(2))
 - (a) \$0.00
 - (b) Frequent Violator: \$100.00
- (2) Issuance of Notice of Public Hearing (6.25.050(5))
 - (a) \$100.00
 - (b) Frequent Violator: \$200.00
- (3) After Mayor/Council Hearing (6.25.050(9))
 - (a) Up to \$250.00
 - (b) Frequent Violator: up to \$500.00
 - (c) In addition to the above: up to \$100 per day until abated
- (4) For the purposes of this section, Frequent Violator is an owner/occupier who has has been issued more than one Declaration of Nuisance Notice in the preceding 12 months.

Chapter 6.05

DEFINITIONS

Sections:

- 6.05.010 Abandoned vehicle.
- 6.05.020 Abate.
- 6.05.030 Building.
- 6.05.040 City planner.
- 6.05.050 Code enforcement officer.
- 6.05.060 Graffiti.
- 6.05.070 Inoperable vehicle.
- 6.05.080 Highway.
- 6.05.090 Junk.
- 6.05.100 Major vehicle repairs.
- 6.05.110 Minor vehicle repairs.
- 6.05.120 Offensive graffiti.
- 6.05.130 Owner of land.
- 6.05.140 Owner of vehicle.
- 6.05.150 Owner.
- 6.05.160 Property.
- 6.05.170 Registered/registration.
- 6.05.180 Street.
- 6.05.190 Vehicle.
- 6.05.200 Cultivation.
- 6.05.210 Fully enclosed and secure structure.
- 6.05.220 Marijuana plant.
- 6.05.225 Primary caregiver.
- 6.05.230 Qualified patient.

6.05.010 Abandoned vehicle.

“Abandoned vehicle” shall mean a vehicle conforms with any of the following:

- (1) Has been placed upon private property without the consent of the property owner; or
- (2) Has remained unmoved on a public street for more than seven consecutive days. [Ord. 323 § 1, 2001]

6.05.020 Abate.

“Abate” shall mean to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such manner and to such an extent as the enforcement officer in his judgment determines is necessary in the interest of the general health, safety and welfare of the community. [Ord. 323 § 1, 2001]

6.05.030 Building.

“Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy. [Ord. 323 § 1, 2001]

6.05.040 City planner.

“City planner” shall mean the city planner and his/her designees. [Ord. 323 § 1, 2001]

6.05.050 Code enforcement officer.

“Code enforcement officer” shall mean that individual or individuals, in possession of required certifications, designated by the city council to enforce the provisions of the city of Biggs Municipal Code. [Ord. 323 § 1, 2001]

6.05.060 Graffiti.

“Graffiti” shall mean any combination of letters and/or symbols inscribed with paint, ink or other medium upon a building, wall or similar surface that is visible to the public. [Ord. 323 § 1, 2001]

6.05.070 Inoperable vehicle.

“Inoperable vehicle” shall mean a vehicle, as defined by BMC 6.05.190, that is not capable of traveling at posted speeds upon public roads under its own power. [Ord. 323 § 1, 2001]

6.05.080 Highway.

“Highway” means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. “Highway” includes “street.” [Ord. 323 § 1, 2001]

6.05.090 Junk.

“Junk” shall mean any cast-off, damaged, discarded, junked, obsolete, salvaged, scrapped, unusable, worn-out or wrecked object, thing or material. [Ord. 323 § 1, 2001]

6.05.100 Major vehicle repairs.

“Major vehicle repairs” include pulling an engine block, repair or replacement of transmissions and front and rear axles, major body repair, dismantling, and similar work associated with automobiles, boats or other motorized or nonmotorized vehicle repair. [Ord. 323 § 1, 2001]

6.05.110 Minor vehicle repairs.

“Minor vehicle repairs” include routine maintenance such as changing oil and tires; replacement of water pump, alternator, brakes, shocks, oil and air filters, and spark plugs; and similar work associated with automobiles, boats or other motorized or nonmotorized vehicle repair. [Ord. 323 § 1, 2001]

6.05.120 Offensive graffiti.

“Offensive graffiti” shall mean any graffiti, as defined by BMC 6.05.060, that conveys vulgar language or images, racially derogatory statements, or gang-related language or symbols. [Ord. 323 § 1, 2001]

6.05.130 Owner of land.

“Owner of the land” shall mean the owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll. [Ord. 323 § 1, 2001]

6.05.140 Owner of vehicle.

“Owner of the vehicle” shall mean the last registered owner and legal owner of record. [Ord. 323 § 1, 2001]

6.05.150 Owner.

“Owner” shall mean any person owning property, as shown on the last equalized assessment roll for county taxes or the lessee, tenant or other person having control or possession of the property. [Ord. 323 § 1, 2001]

6.05.160 Property.

“Property” shall mean all real property, including, but not limited to, the entire premises, parking lots, sidewalks, gutter, driveways, walkways and shall include any building and structure located on such property. [Ord. 323 § 1, 2001]

6.05.170 Registered/registration.

A current, valid California registration for a vehicle conforming to California Vehicle Code Sections 4000 or 9840 for boats. [Ord. 323 § 1, 2001]

6.05.180 Street.

“Street” shall mean the full width of the right-of-way of any street, as defined in the California Vehicle Code, used by the general public, whether or not such street has been accepted as and declared to be part of the city system of streets, including streets forming a part of the state highway system. “Street” also includes alleys and easements where the city is the grantee of the easement. [Ord. 323 § 1, 2001]

6.05.190 Vehicle.

“Vehicle” means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks. [Ord. 323 § 1, 2001]

6.05.200 Cultivation.

“Cultivation” shall mean the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof. [Ord. 379, 2008]

6.05.210 Fully enclosed and secure structure.

“Fully enclosed and secure structure” means a space within a building that complies with the California Building Code, as adopted in the city, or, if exempt from permit requirements, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors and accessible only to a primary caregiver or a qualified patient. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch-by-four-inch or thicker studs overlaid with three-eighths-inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical, and Fire Codes as adopted in the city. [Ord. 379, 2008]

6.05.220 Marijuana plant.

“Marijuana plant” shall mean, and includes, both of the following:

(1) “Immature marijuana plant” shall mean a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

(2) “Mature marijuana plant” shall mean a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination. [Ord. 379, 2008]

6.05.225 Primary caregiver.

“Primary caregiver” means a primary caregiver as defined in Health and Safety Code Section 11362.7. [Ord. 379, 2008]

6.05.230 Qualified patient.

“Qualified patient” means a qualified patient as defined in Health and Safety Code Section 11362.7(f). [Ord. 379, 2008]